



INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1237]

Certain Cloud-Connected Wood-Pellet Grills and Components Thereof; Commission Determination Not to Review a Final Initial Determination Finding a Violation of Section 337; Request for Written Submissions on Remedy, the Public Interest, and Bonding; and Extension of the Target Date for Completion of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (“the Commission”) has determined not to review a final initial determination (“ID”) of the presiding former chief administrative law judge (“CALJ”) finding a violation of section 337 by the accused products of respondent GMG Products LLC (“GMG”). The Commission requests written submissions from the parties, interested government agencies, and other interested persons on the issues of remedy, the public interest, and bonding, under the schedule set forth below. The Commission has also determined to extend the target date for completion of the investigation to May 12, 2022.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-2310. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal, telephone (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on January 4, 2021, based on a complaint filed on behalf of Traeger Pellet Grills LLC (“Traeger”)

of Salt Lake City, Utah. 86 FR 129-30 (Jan. 4, 2021). The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (“section 337”), based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain cloud-connected wood-pellet grills and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 10,218,833 (“the ’833 patent”) and 10,158,720 (“the ’720 patent”). The Commission’s notice of investigation named GMG of Lakeside, Oregon as the sole respondent. The Office of Unfair Import Investigations is not participating in the investigation.

The Commission previously found that Traeger has satisfied the economic prong of the domestic industry requirement with respect to the ’833 and ’720 patents. *See* Order No. 26 (Aug. 10, 2021), *unreviewed by* Comm’n Notice (Sept. 9, 2021).

On September 3, 2021, the former CALJ issued an ID (Order No. 28) granting in part GMG’s motion for summary determination of non-infringement as to the ’833 patent and terminating that patent from the investigation. *See* Order No. 28 (Sept. 3, 2021). On October 28, 2021, the Commission determined, on review, to affirm with modification the subject ID’s finding of non-infringement. *See* Comm’n Notice (Oct. 28, 2021). Accordingly, the ’833 patent was terminated from the investigation.

On December 6, 2021, the former CALJ issued the final ID finding a violation of section 337 based on infringement (*i.e.*, direct, contributory, and induced) of asserted claims 1 and 2 of the ’720 patent. The ID further finds that: (1) Traeger has satisfied the technical prong of the domestic industry requirement; (2) GMG is estopped from challenging the validity of the ’720 patent based on the prior art MAK and Fireboard systems; (3) the prior art MAK and Fireboard systems do not render the asserted claims of the ’720 patent invalid due to anticipation under 35 U.S.C. 102(a) or obviousness under 35 U.S.C. 103; and (4) the ’720 patent is not unenforceable due to inequitable conduct. The former CALJ recommended, should the Commission find a violation, the issuance of a limited exclusion order directed to GMG’s

infringing products and a cease and desist order directed to GMG, and requiring a bond in the amount of 53.1 percent of the entered value for importation of infringing articles during the period of Presidential review.

On December 20, 2021, GMG petitioned for review of certain aspects of the final ID. Specifically, GMG petitioned for review of the ID's findings regarding claim construction, infringement, the technical prong of the domestic industry requirement, validity, and enforceability with respect to the '720 patent. On December 28, 2021, Traeger filed a response in opposition to GMG's petition for review.

The Commission received no public interest comments from the public in response to the Commission's *Federal Register* notice seeking comment on the public interest. 86 FR 70860-61 (Dec. 13, 2021). Traeger and GMG did not submit any public interest comments pursuant to Commission Rule 210.50(a)(4) (19 CFR 210.50(a)(4)).

Having reviewed the record of the investigation, including the parties' briefing, the Commission has determined not to review the final ID's finding of a violation of section 337. The Commission has also determined to extend the target date for completion of the investigation to May 12, 2022.

In connection with the final disposition of this investigation, the Commission may (1) issue an order that results in the exclusion of the subject articles from entry into the United States, and/or (2) issue a cease and desist order that could result in the respondent being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843, Comm'n Op. at 7-

10 (December 1994).

When the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

When the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve, disapprove, or take no action on the Commission's determination. See section 337(j), 19 U.S.C. § 1337(j) and the Presidential Memorandum of July 21, 2005. 70 *Fed. Reg.* 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

WRITTEN SUBMISSIONS: Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, bonding, and the public interest. Such submissions should address the recommended determination by the ALJ on remedy and bonding.

In its initial submission, Complainant is also requested to identify the remedy sought and to submit proposed remedial orders for the Commission's consideration. Complainant is further requested to state the date that the asserted patent expires, to provide the HTSUS subheadings under which the accused products are imported, and to supply the identification information for all known importers of the products at issue in this investigation. The initial written submissions and proposed remedial orders must be filed no later than close of business on **March 22, 2022**. Reply submissions must be filed no later than the close of business on

March 29, 2022. No further submissions on these issues will be permitted unless otherwise ordered by the Commission. Opening submissions are limited to 25 pages. Reply submissions are limited to 20 pages.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (March 19, 2020). Submissions should refer to the investigation number (Inv. No. 337-TA-1237) in a prominent place on the cover page and/or the first page. (*See Handbook for Electronic Filing Procedures, https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf*). Persons with questions regarding filing should contact the Secretary, (202) 205-2000.

Any person desiring to submit a document to the Commission in confidence must request confidential treatment by marking each document with a header indicating that the document contains confidential information. This marking will be deemed to satisfy the request procedure set forth in Rules 201.6(b) and 210.5(e)(2) (19 CFR 201.6(b) & 210.5(e)(2)). Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All nonconfidential written submissions will be available for public

inspection on EDIS.

The Commission vote for this determination took place on March 8, 2022.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in Part 210 of the Commission's Rules of Practice and Procedure, 19 CFR part 210.

By order of the Commission.

Issued: March 8, 2022.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2022-05273 Filed: 3/11/2022 8:45 am; Publication Date: 3/14/2022]